



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket No. FRA-2019-0004-N-3]

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Federal Railroad Administration (FRA), U.S. Department of Transportation (DOT).

ACTION: Notice of information collection; request for comment.

SUMMARY: Under the Paperwork Reduction Act of 1995 (PRA) and its implementing regulations, FRA seeks approval of the Information Collection Request (ICR) abstracted below. Before submitting this ICR to the Office of Management and Budget (OMB) for approval, FRA is soliciting public comment on specific aspects of the activities identified below.

DATES: Interested persons are invited to submit comments on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit written comments on the ICR activities by mail to either: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Room W33-497, Washington, DC 20590; or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Room W34-212, Washington, DC 20590. Commenters requesting FRA to acknowledge receipt of their respective comments must include a self-addressed stamped postcard stating, "Comments on OMB Control Number 2130-NEW" and should also include the title of the ICR. Alternatively, comments may be faxed to (202) 493-6216 or (202) 493-6497, or emailed to Mr. Brogan at robert.brogan@dot.gov, or Ms. Toone at kim.toone@dot.gov. Please refer to the

assigned OMB control number in any correspondence submitted. FRA will summarize comments received in response to this notice in a subsequent notice and include them in its information collection submission to OMB for approval.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Brogan, Information Collection Clearance Officer, Office of Railroad Safety, Regulatory Analysis Division, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Room W33-497, Washington, DC 20590 (telephone: 202-493-6292) or Ms. Kim Toone, Information Collection Clearance Officer, Office of Information Technology, Federal Railroad Administration, 1200 New Jersey Avenue, SE, Room W34-212, Washington, DC 20590 (telephone: 202-493-6132).

SUPPLEMENTARY INFORMATION: The PRA, 44 U.S.C. 3501–3520, and its implementing regulations, 5 CFR part 1320, require Federal agencies to provide 60-days’ notice to the public to allow comment on information collection activities before seeking OMB approval of the activities. See 44 U.S.C. 3506, 3507; 5 CFR 1320.8 through 1320.12. Specifically, FRA invites interested parties to comment on the following ICR regarding: (1) whether the information collection activities are necessary for FRA to properly execute its functions, including whether the activities will have practical utility; (2) the accuracy of FRA’s estimates of the burden of the information collection activities, including the validity of the methodology and assumptions used to determine the estimates; (3) ways for FRA to enhance the quality, utility, and clarity of the information being collected; and (4) ways for FRA to minimize the burden of information collection activities on the public, including the use of automated collection techniques or other forms of information technology. See 44 U.S.C. 3506(c)(2)(A); 5 CFR 1320.8(d)(1).

FRA believes that soliciting public comment may reduce the administrative and paperwork burdens associated with the collection of information that Federal regulations require. In summary, FRA reasons that comments received will advance three objectives: (1) reduce reporting burdens; (2) organize information collection requirements in a “user-friendly” format to improve the use of such information; and (3) accurately assess the resources expended to retrieve and produce information requested. See 44 U.S.C. 3501.

The summary below describes the ICR that FRA will submit for OMB clearance as the PRA requires:

Title: Federal Railroad Administration Disadvantaged Business Enterprise (DBE) Disparity Study.

OMB Control Number: 2130-NEW.

Abstract: The objective of this work is to complete a congressionally-mandated disparity study evaluating the participation by small and disadvantaged businesses in railroad contracting that meets the requirements of the Disadvantaged Business Enterprise (DBE) program for federally-funded projects administered by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA), 49 CFR part 26. The purpose of this disparity study is to evaluate the market for the availability and utilization of small and disadvantaged businesses in publicly-funded railroad contracting. The study will be used as evidence to inform FRA and DOT on the state of small and disadvantaged business contracting in the railroad industry and will be a component in the FRA’s Title VI compliance program.

FRA does not currently have statutory authority to administer a DBE program like those in place at FHWA, FTA, and the Federal Aviation Administration (FAA). DOT

DBE regulations applicable to FHWA, FTA and FAA require state and local transportation agencies that receive DOT financial assistance to establish goals for the participation of DBEs. Each DOT-assisted State and local transportation agency is required to establish annual DBE goals, review the scopes of anticipated large prime contracts, and establish contract-specific DBE subcontracting goals. Without statutory DBE authority, FRA can only encourage recipients of its Federal financial assistance to use in their projects small business concerns owned and controlled by socially and economically disadvantaged individuals. These types of small business concerns include small businesses, DBEs, Veteran-Owned Small Businesses, and Service Disabled Veteran-Owned Small Businesses. Despite the lack of a formal DBE program, FRA fully supports the objectives of DBE programs and all FRA's grantees are required to avoid discrimination in contracting.

In addition, in late 2015, Congress passed the "Fixing America's Surface Transportation Act" (FAST Act), (Pub. L. 114-94). The FAST Act codified the requirement for FRA to conduct "a nationwide disparity and availability study on the availability and use of small business concerns owned and controlled by socially and economically disadvantaged individuals and veteran-owned small businesses in publicly funded intercity rail passenger transportation projects." See FAST Act, sec. 11310, Small Business Participation Study. The legislation requires that: "Not later than 2 years after the date of enactment of this Act, the Secretary shall submit a report containing the results of the study ... to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Transportation and Infrastructure of the House of Representatives." Id.

The collection of information for the study includes three surveys and a series of webinar focus groups. In Survey #1, FRA's study contractor (i.e., the Jack Faucett Associates team) will contact all FRA grant recipients and work with them to identify all of the prime contractors, consultants, and vendors with whom they spent grant funds and the amount of those funds. Next, the study team will contact the sub-grantees, prime contractors, consultants and suppliers that the study identified, and work with them to identify all subcontractors, sub-consultants, and suppliers that they utilize and the amount of those contracts. This survey is necessary to develop estimates of the amount of FRA grants and contracts that flow to DBEs.

In Survey #2, the study team will survey DBE and non-DBE firms in the railroad industry. The survey will elicit data on firms' experiences with discrimination, as well as experiences in bidding with the grantees and their prime contractors and consultants. This approach ensures that anecdotal findings are corroborated by an actual representation of the DBE and non-DBE communities at large in the relevant markets. The personal experiences of disparate treatment suffered by minorities or women in seeking and performing public and private sector work in the relevant marketplace reinforce buttress sound statistical evidence of disparate impacts. Since response rates to voluntary surveys tend to be fairly low, the study team will take additional steps to increase responsiveness, including an outreach campaign, professionally designed surveys, cover letters signed by top FRA officials, multiple reminders, and a devoted wide-area telephone service line and email address for requesting replacement surveys and addressing other inquiries. Moreover, the study team will statistically validate representativeness using surveys of non-respondents.

In the focus groups, the study team will also collect qualitative anecdotal information through in-depth webinar focus groups of DBE and non-DBE business owners, as well as procurement personnel at FRA and its grantees. These focus groups likewise will explore barriers to the full and fair participation of DBEs in FRA's market area and that of its grantees. The focus groups also will investigate whether the USDOT programs and policies, as they apply to FRA and its grantees, adequately address these challenges. These focus groups will yield valuable information about the day-to-day realities affecting DBE firms and will inform how to develop FRA's policy responses to those challenges.

In Survey #3, the study team will survey firms to verify their DBE status. The comparison of FRA's use of DBEs versus their prevalence by industry and geography is crucial to developing the sound statistical evidence of discrimination the courts have required. Starting from known business establishment lists (such as those from Dun & Bradstreet), the study will cross-reference numerous additional listings and directories of DBE firms in the relevant geographic and product markets in order to improve the classification of firms according to their status. Next, the study team will take the additional step of validating putative assignments using telephone surveys of a statistically random sample of businesses from the master database.

Type of Request: Approval of a new collection of information.

Affected Public: Businesses.

Form(s): FRA F 6180.171; FRA F 6180.172; FRA F 6180.173; FRA F 6180.174.

Respondent Universe: 35,000 Grantees, Sub-Grantees, Prime Contractors, Sub-Contractors, DBEs, and Non-Disadvantaged Business Firms.

Frequency of Submission: On occasion.

Reporting Burden:

Form No.	Respondent universe	Total annual responses	Average time per response	Total annual burden hours	Total annual burden cost *
Survey #1: Grantee and Contractor Collection Form	1,250 Grantees, Sub-grantees, Prime-Contractors, and Sub-Contractors	500 surveys	4 hours	2,000	\$115,300
Survey #2: Experiences with Discrimination	35,000 DBE and non-DBE firms	2,750 surveys	.25 hours	688	\$39,663
Focus Groups on Experiences with Discrimination	20,000 DBE and non-DBE firms	250 focus group participants	1 hour	250	\$14,413
Survey #3: DBE Status Verification	28,000 DBE and non-DBE firms	4,250 surveys	.05 hours	213	\$12,279

- Note: The annual hourly wage rate for the above calculations is \$57.65 and is derived from the Management Occupations (Occupational Code 11-0000) Bureau of Labor Statistics of the U.S. Department of Labor: Occupational Employment Statistics, May 2017, National Occupational Employment and Wage Estimates.

Total Estimated Annual Responses: 7,750.

Total Estimated Annual Burden: 3,151 hours.

Total Estimated Dollar Cost: \$181,655.

Under 44 U.S.C. 3507(a) and 5 CFR 1320.5(b) and 1320.8(b)(3)(vi), FRA informs all interested parties that it may not conduct or sponsor, and a respondent is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Authority: 44 U.S.C. 3501-3520.

Brett A. Jortland,

Acting Chief Counsel.

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